

OFFICE COPY

APPENDIX

FILED

NOV 6 1969

JOHN F. DAVIS, CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 300

James Tooahimpah Tate,  
Vila Tooahnippah (Paddlety),  
Julia Tooahnippah (Goombi),  
and James Tooahimpah Tate,  
the duly qualified and acting  
Administrator of the Estate  
of Frankie Lee Tooahnippah,  
deceased,

*Petitioners,*

V.

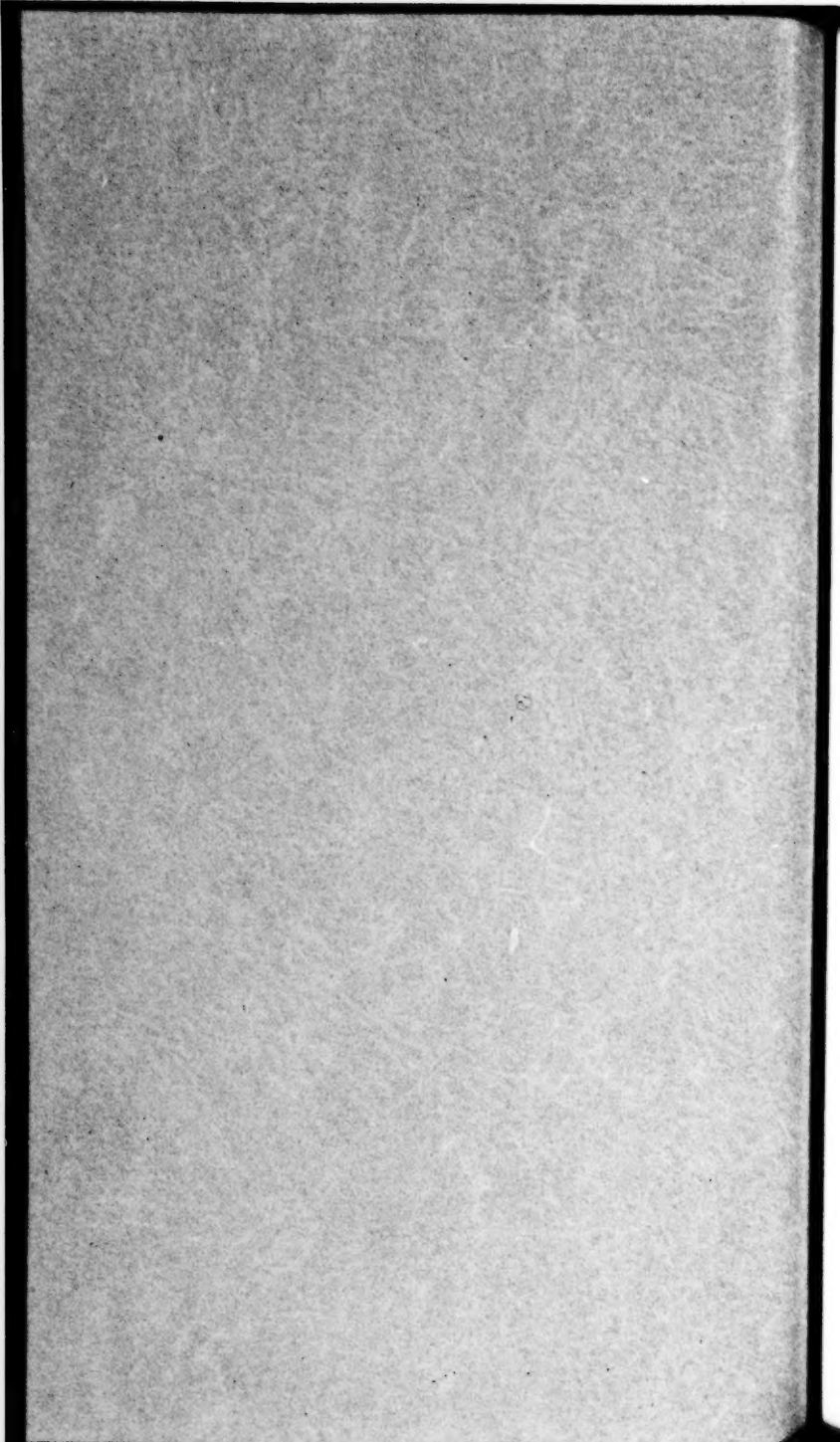
Walter J. Hickel, Secretary of  
the Interior for the United  
States, and Dorita High Horse,  
*Respondents.*

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE TENTH CIRCUIT

---

PETITION FOR CERTIORARI FILED JUNE 28, 1969  
CERTIORARI GRANTED OCTOBER 13, 1969



## I N D E X

THE CONTENTS OF THE ITEMS THAT ARE CONTAINED IN THE APPENDIX AND THE PAGES WHERE THE SAID ITEMS FIRST APPEAR IN THE APPENDIX ARE AS FOLLOWS:

CHRONOLOGICAL LIST OF DATES ON WHICH PLEADINGS WERE FILED, HEARINGS HELD AND ORDERS ENTERED . . . . .	1
COMPLAINT FOR JUDGMENT REVERSING DECISION OF THE SECRETARY OF THE INTERIOR FILED BY TATE ET AL., . . . . .	5
ORDER PERMITTING DORITA HIGH HORSE TO INTERVENE . . . . .	11
INTERVENER'S ANSWER WITH EXHIBIT "A" DELETED . . . . .	12
INTERVENER'S MOTION FOR SUMMARY JUDGMENT . . . . .	17
DEFENDANTS ANSWER . . . . .	19
DEFENDANTS MOTION FOR SUMMARY JUDGMENT . . . . .	23
MOTION OF PLAINTIFFS FOR SUMMARY JUDGMENT . . . . .	25
MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT . . . . .	27
ORDER AND JUDGMENT OF THE UNITED STATES DISTRICT COURT . . . . .	38
ORDER FOR SUBSTITUTION OF DECEASED PARTY PLAINTIFF BY THE UNITED STATES DISTRICT COURT . . . . .	40

DEFENDANT'S NOTICE OF APPEAL . . . . .	42
NOTICE OF APPEAL BY INTERVENOR DORITA HIGH HORSE . . . . .	43
OPINION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT . . . . .	44
JUDGMENT IN CASE NO. 9979 IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT . . . . .	48
JUDGMENT IN CASE NO. 9980 IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT . . . . .	49
PETITION FOR REHEARING IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT . . . . .	50
ORDER DENYING REHEARING IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT . . . . .	62
ORDER GRANTING SUBSTITUTION OF PARTY IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT . . . . .	63
WILL OF GEORGE CHAHSENAH DATED MARCH 14, 1963 . . . . .	64
DECISION OF EXAMINER OF INHERITANCE ENTERED AUGUST 31, 1966 . . . . .	70
PETITION FOR REHEARING DENIED BY EXAMINER OF INHERITANCE ENTERED NOVEMBER 16, 1966 . . . . .	79

APPEAL FROM DECISION OF HEARING EXAMINER BY RAYMOND F. SANFORD, REGIONAL SOLICITOR ACTING FOR THE SECRETARY OF THE INTERIOR . . . . .	82
--	----



CHRONOLOGICAL LIST OF DATES ON WHICH PLEADINGS  
WERE FILED, HEARINGS HELD AND ORDERS ENTERED

Explanatory Note: In the Appendix and as hereinafter set out in this chronological list, the pleadings and filings in the United States District Court and in the United States Court of Appeals for the Tenth Circuit on appeal will be in chronological order and thereafter there will appear proceedings held before the Examiner of Inheritance and before the Secretary of the Interior in a chronological order, which proceedings before the Examiner of Inheritance and before the Secretary of the Interior were prior to the filing of the Complaint in the United States District Court for the Western District of Oklahoma, therefore to be entirely chronological you should examine the last four (4) items numbered 19, 20, 21, and 22 prior to examination of Item 1 and subsequent items.

1. Complaint for Judgment Reversing Decision of the Defendant and Providing Declaratory and Other Relief by Tate et al., against Stewart L. Udall, Secretary of the Interior for the United States, was filed on August 25, 1967.
2. Order Permitting Dorita High Horse to Intervene was filed on September 27, 1967

3. Intervener's Answer was filed on September 27, 1967.
4. Intervener's Motion for Summary Judgment was filed on September 27, 1967.
5. Defendants Answer was filed on October 20, 1967.
6. Defendants Motion for Summary Judgment was filed on October 31, 1967, with Appendix containing Administrative Record below omitted.
7. Motion of Plaintiffs for Summary Judgment was filed on November 20, 1967.
8. Memorandum Opinion of Judge Luther B. Eubanks, United States District Judge, was filed on December 18, 1967.
9. Order and Judgment of the United States District Court was filed on December 28, 1967.
10. Order for Substitution of Deceased Party Plaintiff was filed on February 8, 1968.
11. Notice of Appeal by Defendant was filed on February 20, 1968.
12. Notice of Appeal by Intervener was filed on February 26, 1968.
13. Opinion of the United States Court of Appeals for the Tenth Circuit was filed on March 3, 1969.
14. Judgment in Case No. 9979 was filed on March 3, 1969.

15. Judgment in Case No. 9980 was filed on March 3, 1969.
16. Petition for Rehearing of James Tooahimpah Tate, et al., Appellees was filed on March 24, 1969.
17. Order Denying Rehearing by the United States Court of Appeals for the Tenth Circuit was filed on April 8, 1969.
18. Order granting the substitution of a party in lieu of a deceased party, one of the appellees, which order was filed by the United States Court of Appeals for the Tenth Circuit on June 20, 1969.
19. Will of George Chahsenah dated March 14, 1963, which was approved by the Examiner of Inheritance on August 31, 1966, and disapproved and disallowed on June 20, 1967, by the Secretary of the Interior on Appeal; the Secretary of the Interior acting by and through Raymond F. Sanford, Regional Solicitor pursuant to delegated authority.
20. Order Approving Will and Decreeing Distribution by the Examiner of Inheritance filed on August 31, 1966.
21. Petition for Rehearing Denied by the Examiner of Inheritance pursuant to Order filed on November 16, 1966.
22. Appeal from the Decision of the Hearing Examiner which order was issued by Raymond F. Sanford, Regional Solicitor

acting for the Secretary of the Interior pursuant to delegated authority which decision and order disapproved and disallowed the Will of George Chahsenah and which decision was issued and filed on June 20, 1967.

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

Viola Atewooftakewa (Tate),  
Frankie Lee Tooahnippah,  
Vila Tooahnippah, and  
Julia Tooahnippah (Goombi),

Plaintiffs

vs

Civ-67-323

Stewart L. Udall,  
Secretary of the Interior  
for the United States,  
Washington, D. C.,

Defendant

COMPLAINT FOR JUDGMENT REVERSING DECISION OF  
THE DEFENDANT AND PROVIDING DECLARATORY AND  
OTHER RELIEF

Comes now the Plaintiffs and for their action  
against the Defendant allege and state as follows,  
to-wit:

I

This action is an appeal seeking judicial  
review of the Orders of the Secretary of the  
Interior and of his subordinate appointees,  
personnel, and employees, namely, the Solicitor  
of the Secretary of the Interior and the Regional  
Solicitor of the Tulsa, Oklahoma, Region for the  
Secretary of the Interior, pursuant to 5 U.S.C.  
Sec. 1009 and Title 28 of the U.S.C. §1391 as  
amended and for appropriate relief as provided  
pursuant to the said Administrative Procedure Act.

II

An actual controversy exists between the  
Plaintiffs herein and the Defendant and the value of  
the claim of the Plaintiffs in this controversy  
exceeds the sum of \$10,000.00 exclusive of  
interest and costs.

III

That the Plaintiffs are restricted Indian wards  
of the United States Government and the Plaintiffs are  
members of the Comanche Tribe of Indians residing in the  
Western District of Oklahoma in the vicinity of  
Apache, Oklahoma, and are entitled to the protection  
of all of the Federal Laws, Rules, and Regulations  
affecting Indian wards of the United States.

IV

That George Chahsenah, a member of the Comanche

tribe unallotted died testate a resident of Caddo County, Oklahoma, on October 11, 1963, being approximately 55 years of age at the time of his death, and there was set for hearing before Kent R. Blaine, the Examiner of Inheritance for the Office of the Solicitor who had authority to determine the probate of the estates of Comanche Indians living in Western Oklahoma, and the said hearing was for the purpose of determining the heirs or for the probating of the Will of said George Chahsenah, which matter came on for hearing in four formal hearings held at Anadarko, Oklahoma, before the Examiner of Inheritance, and on August 31, 1966, Kent R. Blaine, the Examiner of Inheritance issued an Order approving the last Will of George Chahsenah executed on March 14, 1963, and the Examiner decreed distribution of the Estate of George Chahsenah as provided in said Will to the Plaintiffs herein.

V

That the approval and probate of the said Will was protested and contested by Dorita High Horse, the alleged daughter of George Chahsenah born out of wedlock and by Betsy Lois Chahsenah (Tarsip), Earl Chahsenah, Strudwick Tahsequaw, Lydia Mae Tarsip, James Chahsenah, and Albert Tahsequaw, Jr., Zelma Tselee, John H. Chahsenah, and Garnett Tahsequaw, nieces and nephews of George Chahsenah, the decedent.

VI

That the Plaintiff, Viola Atewoofatakewa (Tate) is a niece of George Chahsenah, the decedent, and the Plaintiffs, Frankie Lee Tooahnippah, Vila Tooahnippah, and Julia Tooahnippah (Goombi), are great nieces of George Chahsenah, the decedent, and are the children of Viola Atewoofatakewa (Tate).

VII

That George Chahsenah was never married and left

no issue of his body other than Dorita High Horse, who claims to be his daughter born out of wedlock, and the said George Chahsenah left no surviving brothers or sisters or parents or surviving spouse.

### VIII

That the contestants and protestants of the probate of the Will of George Chahsenah filed a Petition for Rehearing before the Examiner of Inheritance and the Petition for Rehearing was denied pursuant to an Order issued by the Examiner of Inheritance on November 16, 1966.

### IX

The protestants and contestants of the probate of the Will of George Chahsenah, acting by and through their Attorney, Houston Bus Hill, filed timely Notice of Appeal to the Secretary of the Interior from the Order of the Examiner of Inheritance dated August 31, 1966, ordering probate and approval of the said Will and from the Order denying the Petition for Rehearing dated November 16, 1966.

### X

That on June 20, 1967, there was issued an Order by Raymond F. Sanford, Solicitor for the Tulsa Region of the Office of the Solicitor for the United States Department of the Interior which Order of the Regional Solicitor reversed the Examiners approval of the Will of George Chahsenah and the Regional Solicitor disapproved the said Will pursuant to discretionary authority conferred by 25 U.S.C. § 373 and the Regional Solicitor stated that the Will did not achieve just and equitable treatment of the decedents heirs at law and was therefore disapproved and the Order of the Regional Solicitor of June 20, 1967, also disapproved all previous Wills of George Chahsenah

when and if same were offered for probate for the same reason, and the Regional Solicitor decreed distribution of the Estate of George Chahsenah to Dorita High Horse, the alleged daughter of the said decedent born out of wedlock.

## XI

That the Plaintiffs are aggrieved by the Order of June 20, 1967, issued by the Regional Solicitor that disapproved the Will of George Chahsenah and that ordered distribution of the Estate of George Chahsenah, deceased, to Dorita High Horse, the alleged daughter of the said decedent born out of wedlock because if the Regional Solicitor had not reversed the Examiner of Inheritance, the Estate of George Chahsenah, pursuant to the terms of the Will of the said George Chahsenah, would have been distributed to the Plaintiffs herein.

## XII

That the Plaintiffs have exhausted all of the administrative remedies available in seeking the approval of the probate of the Will of George Chahsenah, deceased, dated March 14, 1963, and distribution of his Estate to the Plaintiffs herein.

## XIII

That the acts of the Secretary of the Interior and of his representatives, including the Solicitor and the Regional Solicitor for the Tulsa Region, who promulgated the Order of June 20, 1967, denying the probate of the Will of George Chahsenah and decreeing distribution of his estate to Dorita High Horse are arbitrary, capricious, unreasonable and an abuse of discretion, and the said acts are in excess of statutory jurisdiction and authority and lack rational and statutory foundation to the detriment of the Plaintiffs by reason of a misconception of the power and authority of the Defendant, the Secretary of the Interior and of his representatives.

XIV

That the Regional Solicitor for the Tulsa Region erred in not finding according to the evidence and law that George Chahsenah died testate leaving a valid Will dated March 14, 1963, and the Regional Solicitor further erred in failing to Order distribution of the Estate of George Chahsenah pursuant to the terms of the last Will of George Chahsenah, deceased, to the Plaintiffs herein.

WHEREFORE, Plaintiffs pray that:

1. The Court review, reverse and set aside the Defendants decision and Order of June 20, 1967.
2. That the Defendant be directed to approve the probate of the Will of George Chahsenah dated March 14, 1963, and decree distribution of the Estate of George Chahsenah to the Plaintiffs herein in accordance with the terms of the Will.
3. That the Court enjoin and restrain the Defendant and his agents and representatives from distributing or authorizing or permitting the distribution of the properties and funds in the Estate of George Chahsenah until final disposition of this Complaint and Action.
4. That the Plaintiffs have such other and further relief as may seem just and proper in Law and equity together with all costs in this matter.

(Sgd.) Omer Luellen

---

Omer Luellen

First State Bank Building  
Hinton, Oklahoma 73047  
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

O R D E R

A Motion to Intervene has been filed herein by Dorita High Horse, together with Memorandum of Points and Authorities in Support of Intervener's Motion, and the Court, after examining the same and being fully advised in the premises, finds that Dorita High Horse has an interest relating to the property which is the subject matter of this suit, and under Rule 24 (a) (2) of the Federal Rules of Civil Procedure, Dorita High Horse has a right to intervene and become a defendant in this action so as to protect her interest.

IT IS THEREFORE ORDERED AND DECREED that Dorita High Horse be and she is hereby permitted to intervene and become a defendant in this action.

Done this 27th day of September, 1967.

(Sgd.) Luther B. Eubanks  
Luther B. Eubanks  
United States District Judge

IN THE UNITED STATES DISTRICT COURT

INTERVENER'S ANSWER

Intervener answers the complaint herein as follows:

1. The complaint fails to state a claim against defendant for which relief can be granted and discloses on its face that this Court has no jurisdiction over the subject matter.

2. Intervener denies the allegations in paragraph I that this Court has jurisdiction pursuant to the provisions of the Administrative Procedures Act, 60 Stat. 237, 243, 5 U.S.C., Section 1009 and 28 U.S.C., Section 1391, as amended.

3. Intervener admits that part of the allegations in paragraph II of said complaint to the effect that the controversy exceeds the sum of \$10,000 exclusive of interest and cost.

4. Intervener denies that part of the allegations that the plaintiffs are restricted Indians but admits that they are Indian Wards of the United States Government and Members of the Comanche Tribe of Indians residing in the Western District of Oklahoma and are entitled to the protection of all the Federal Laws, rules and regulations affecting the Kiowa, Comanche and Apache Tribes. Further, Intervener admits that the lands here involved are restricted and held in trust by the United States Government, acting by and through the Secretary of Interior under the General Allotment Act of February 8, 1887, as amended.

5. Intervener admits that part of the allegations under paragraph IV to the effect that George Chahsenah was a Member of the Comanche Tribe, unallotted, and that he died on October 11, 1963, at the approximate age of 55 years but denies that he died testate. Intervener admits that several hearings were had before Kent R. Blaine, the Examiner of Inheritance, for the Office of the Solicitor and the Secretary of the Interior for the purpose of approving or disapproving said purported Last Will and Testament of George Chahsenah, deceased Comanche Unallottee, dated March 14, 1963, and to determine the heirs of the said George Chahsenah and the manner in which said estate should be distributed. Intervener admits that on August 31, 1966, the Examiner of Inheritance issued an order approving the purported Last Will and Testament and decreeing distribution of the estate as provided in said purported Will to the plaintiffs herein.

6. Intervener admits the allegations in paragraph V of said complaint.

7. Intervener admits the allegations in paragraph VI of said complaint.

8. Intervener denies the allegations in paragraph VII of the complaint to the effect that George Chahsenah was never married but admits that Dorita High Horse was George Chahsenah's daughter as so found and decreed by the Examiner in his Order of August 31, 1966. Intervener also admits that George Chahsenah left no surviving brothers or sisters, or parents or surviving spouse.

9. Intervener admits the allegations in paragraph VIII of said complaint to the

effect that contestants and protestants (including Intervener) of the purported Last Wills and Testaments of George Chahsenah, deceased Comanche Unallottee, filed a Petition for Rehearing before the Examiner of Inheritance but only as to the approval of said Will and the distribution of the estate to the beneficiaries thereunder, but not as to the Examiner's finding that Dorita High Horse was a daughter of George Chahsenah. Intervener admits that the Petition for Rehearing was denied by the Examiner on November 16, 1966.

10. Intervener admits that the protestants and contestants (including Intervener herein) of the purported Last Will and Testament of George Chahsenah, deceased Comanche Unallottee, by and through his attorney, Houston Bus Hill, filed an Appeal from the Examiner of Inheritance's Order of August 31, 1966, approving the purported Last Will of George Chahsenah, executed on March 14, 1963, and Decreeing Distribution of the estate to the plaintiffs herein and his Order of November 16, 1966, denying Petition for Rehearing and approving his original order. That said Appeal in no wise attacked the finding of the Examiner of Inheritance in his Order of August 31, 1966, wherein he found and decreed that Dorita High Horse was the daughter of George Chahsenah. That this finding by the Examiner that Dorita High Horse was the daughter of George Chahsenah thus becomes final and unappeal from and binding upon all the parties. That a copy of said Appeal is attached hereto, marked Exhibit A, and made a part hereof as if fully incorporated herein.

11. Intervener admits all of the allegations of paragraph X of said complaint, except that part which alleges that Intervener was born out of wedlock, which she denies.

12. Intervener admits the allegations of paragraph XI.

13. Intervener admits the allegations in paragraph XII of said complaint.

14. Intervener denies the allegations in paragraph XIII of said complaint to the effect that the Order, dated June 20, 1967, promulgated by the Secretary of Interior, acting by and through the Solicitor was arbitrary, capricious, unreasonable and an abuse of discretion, and further denies that said acts were in excess of statutory jurisdiction and authority and lacked rational and statutory foundation by reason of a misconception of his power and authority. Intervener states that said Order of June 20, 1967, was authorized under the Federal Act hereinabove mentioned and the rules and regulations promulgated by the Secretary of Interior, and the Secretary, acting by and through the Solicitor exercised proper discretionary power and action and same is not subject to review by this Court.

15. Intervener specifically denies the allegations in paragraph XIV of said complaint to the effect that the defendants, Secretary of Interior, acting by and through the Regional Solicitor for the Tulsa Region, erred in not finding, according to the evidence and law, that George Chahsenah died testate, leaving a valid Will, dated March 14, 1963, and failing to order distribution pursuant to the terms of said Will to the plaintiffs herein. On the other hand, Intervener states that there was ample evidence and law to support said Order of June 20, 1967, and the Secretary having disapproved said Will of March 14, 1963, and all previous purported Wills, the Order of distribution was

within the scope of his authority under the law and evidence. Intervener states that plaintiffs are not entitled to any relief and this Court is without jurisdiction to set aside said decision of June 20, 1967.

WHEREFORE, having fully answered herein, Intervener specifically requests that said complaint be dismissed, that relief prayed for therein by plaintiffs be denied; and that in the alternative, if said Court directs jurisdiction, that it uphold the Order of the Secretary of Interior, acting by and through the Solicitor, dated June 20, 1967.

(Sgd.) Houston Bus Hill  
HOUSTON BUS HILL  
1415 First National  
Building  
Attorney for Dorita  
High Horse, Intervener

(Exhibit "A" omitted in printing)

(Explanatory Note: Exhibit "A" consisted primarily of the resume of the Intervener's interpretation of the evidence presented before the Hearing Examiner.)

IN THE UNITED STATES DISTRICT COURT

INTERVENER'S MOTION FOR  
SUMMARY JUDGMENT

The Intervener, Dorita High Horse, (Defendant in this action), by her attorney, Houston Bus Hill, moves this Court for an order granting judgment in favor of the defendant and Intervener in the above entitled cause, pursuant to Rule 56 of the Federal Rules of Civil Procedure, dismissing the complaint in this action on the ground that there is no dispute as to any material fact and the defendant and Intervener are entitled to judgment as a matter of law. The grounds for this motion are:

1. That the complaint fails to state a claim by plaintiffs upon which relief can be granted.

2. That this action is brought to review the decision of the Secretary of Interior, acting by and through Raymond F. Sanford, Field Solicitor, dated June 20, 1967.

3. That the disapproval of decedent's purported Last Will and Testament and certain other purported Wills and the determination of the heirs at law of the decedent and distribution of the estate to the Intervener, Dorita High Horse, daughter of decedent was a proper exercise of power conferred exclusively upon the Secretary of the Interior by Congress.

4. That this Court is without jurisdiction or power to set aside an order of the Secretary of Interior made within the scope of his authority as provided by Section 1 of the Act of June 25, 1910, 36 Stat. 855, as amended, 25 U.S.C., Section 372.

5. That this Court is without jurisdiction or power to set aside an order of the Secretary of Interior in disapproving the purported Last Will and Testament of George Chahsenah, restricted fullblood deceased Comanche Unallottee Indian, determining the heirs of said decedent and distributing said estate to the daughter, Dorita High Horse, Intervener herein.

6. That the action of the Secretary of Interior in his Order of June 20, 1967, in rescinding the Examiner's Order of August 31, 1966, and disapproving the purported Last Will and Testament of George Chahsenah, dated March 14, 1963, and certain other purported Wills and determining decedent's heir as being his daughter, Dorita High Horse, and distributing said estate to Intervener and holding that no useful purpose would be served by additional hearings before the Examiner, is supported by the law and substantial evidence.

Respectfully submitted,

(Sgd.) Houston Bus Hill

HOUSTON BUS HILL

1415 First National Building

Oklahoma City, Oklahoma

Attorney for Intervener

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

VIOLA ATEWOOF TAKEWA (Tate),  
FRANKIE LEE TOOAHNIPPAH,  
VILA TOOAHNIPPAH, and  
JULIA TOOAHNIPPAH (Goombi),

Plaintiffs

-vs-

STEWART L. UDALL, Secretary  
of the Interior for the  
United States, Washington,  
. D. C.

Defendant

CIVIL NO. 67-323

A N S W E R

Comes now the defendant and for Answer to the Complaint of the plaintiff alleges and states:

I.

This defendant denies each, every, and all the allegations of plaintiff's complaint except those hereinafter specifically admitted or affirmatively alleged.

II.

Defendant admits that this Court has jurisdiction to review the decision of the Secretary of Interior pursuant to the Administrative Procedure Act.

III.

Defendant admits the allegation of paragraph II of plaintiff's complaint.

IV.

Defendant admits the allegations of paragraph III of plaintiff's complaint.

V.

Defendants admits the allegation of paragraph IV of the plaintiff's complaint.

VI.

Defendant admits the allegation of paragraph V of the plaintiff's complaint.

VII.

Defendant admits the allegation of paragraph VI of plaintiff's complaint.

VIII.

With reference to paragraph VII of plaintiff's complaint the defendant affirmatively alleges that Dorita High Horse is the admitted daughter of George Chahsenah who was born out of wedlock and that said George Chahsenah left surviving no brothers, sisters, parents, or spouse.

IX.

Defendant admits the allegation of paragraph VIII of plaintiff's complaint.

X.

Defendant admits the allegations of paragraph IX of plaintiff's complaint.

XI.

As to paragraph X of plaintiff's complaint this defendant states that on June 20, 1967, there was issued an Order by Raymond F. Sanford, Solicitor for the Tulsa Regional Office of the Solicitor for the United States Department of Interior, reversing the examiner of inheritance's approval of the will of George Chahsenah and the said Regional Solicitor disapproved said will in accordance with the statutory authority for the reasons set forth therein, copy of which is attached hereto and made a part hereof by reference. Said Opinion also

disapproved all previous wills of George Chahsenah and decreed the distribution of the estate of George Chahsenah to Dorita High Horse, the daughter of the decedent born out of wedlock.

XII.

This defendant specifically denies the allegations of paragraphs number XI, XII, XIII, and XIV of plaintiff's complaint as legal conclusions and not supported by the record and the evidence introduced and submitted before the examiner of inheritance and the Secretary of the Department of Interior.

XIII.

Further answering, this defendant alleges and states that the action of the Secretary of Interior in not approving the last will and testament of George Chahsenah, deceased unallotted Comanche Indian, was not arbitrary, capricious, unreasonable nor was there any abuse of discretion and all action taken was within the statutory jurisdiction and authority of the Secretary, and that said decision was in accordance with the evidence and the law and that his decision was supported by substantial evidence and may not be disturbed by this court.

Wherefore defendant prays that plaintiff take nothing by his complaint and that judgment be rendered in favor of the defendant affirming the administrative decision rendered in this case and for the dismissal of this action.

B ANDREW POTTER

United States Attorney

(Sgd.) Robert L. Berry

ROBERT L. BERRY

Assistant United States  
Attorney

(Certificate of Mailing omitted in Printing)

IN THE UNITED STATES DISTRICT COURT

MOTION FOR SUMMARY JUDGMENT

The defendant, Stewart L. Udall, Secretary of the Interior of the United States of America, Washington, D.C., by his attorneys, B. Andrew Potter, United States Attorney for the Western District of Oklahoma and Robert L. Berry, Assistant United States Attorney, moves this Honorable Court for an order granting summary judgment in favor of the defendant in the above-entitled cause, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and dismissing the Complaint in this action for the reason that there is no dispute as to any material fact and the defendant is entitled to judgment as a matter of law.

The particular grounds for this motion are as follows:

1. That the Complaint fails to state a claim upon which relief can be granted.

2. That this action is brought to review the final administrative decision of the Secretary of the Interior who, acting through the Regional Solicitor of the Department of the Interior under exclusive powers conferred upon the Secretary by Congress and redelegated by the Secretary to the Regional Solicitor, disaffirmed and set aside a hearing examiner's approval of a purported last will and testament and all previous wills of George Chahsenah, deceased unallotted Comanche Indian, that said decision is not arbitrary, capricious, nor abuse of discretion, nor otherwise not in accordance with law, is supported by substantial evidence, and that this Court is without jurisdiction to set aside that decision for the reason that the administrative actions were

within the scope of the authority of the Secretary of the Interior and are final and conclusive.

In support of this Motion for Summary Judgment, the defendant refers to the pleading and files herein, and the Brief of points and authorities and its appendix, attached hereto, all to be considered as a part hereof.

(Sgd.) B Andrew Potter  

---

UNITED STATES ATTORNEY  
WESTERN DISTRICT OF OKLAHOMA

(Sgd.) Robert L. Berry  

---

ASSISTANT UNITED STATES  
ATTORNEY  
ATTORNEYS FOR DEFENDANT

(Certificate of Mailing omitted in printing)

(Complete copy of Appendix containing copy of Administrative Record and Testimony omitted in printing by agreement)

(A portion of the Administrative Record does appear in this Appendix by stipulation and agreement and the items from the Administrative Record which appear in this Appendix commence on Page 64 of this Appendix and continue through Page 87.)

IN THE UNITED STATES DISTRICT COURT

MOTION OF PLAINTIFFS FOR SUMMARY  
JUDGMENT

---

I

Comes now the Plaintiffs by their Attorney of record and moves this Honorable Court for an Order granting Summary Judgment in favor of the Plaintiffs in the above entitled cause, pursuant to Rule 56 of the Federal Rules of Civil Procedure, upon the record and pleadings and as prayed for in Plaintiffs' Complaint, directing the approval and probate of the Will of George Chahsenah dated March 14, 1963, and the distribution of the Estate of George Chahsenah in accordance with the terms of the said Will to the Plaintiffs herein.

II

The grounds for this Motion are:

1. The Defendant's actions complained of are arbitrary, capricious, unreasonable and an abuse of discretion and are not in accordance with the Law and are not supported by substantial evidence.

2. The Defendant made a decision herein contrary to the due process of Law.

3. The Defendant ignored the significant and substantial evidence offered on the controverted facts and made an erroneous decision which was contrary to Law.

4. The Defendant in refusing to approve the Will of George Chahsenah did not act in a

discretionary manner and his acts were in fact arbitrary and capricious even though the Defendant attempted to justify his refusal to approve the said Will by stating that he was exercising his discretionary responsibility.

5. The Defendant made a decision which rested on an erroneous legal foundation.

6. The Defendant by disapproving the Will of George Chahsenah acted in excess of the Statutory jurisdiction authority of the Secretary of the Interior.

7. The Defendant's actions in disapproving the Will of George Chahsenah was a misconception of his power and authority relative to the disapproval or approval of Wills of Indian testators whereby he attempted to substitute his will for that of the Indian testator.

### III

In support of this Motion for Summary Judgment, the Plaintiffs refer to all of the pleadings and to the administrative record filed herein and the Brief and authority attached hereto, all to be considered a part hereof.

(Sgd.) Omer Luellen  
\_\_\_\_\_  
Omer Luellen  
First State Bank Building  
P.O. Box 96  
Hinton, Oklahoma 73047  
Attorney for the Plaintiffs  
herein.

(Certificate of Mailing omitted in printing)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

VIOLA ATEWOOF TAKEWA (Tate)  
FRANKIE LEE TOOAHNIPPAH  
VILA TOOAHNIPPAH, and  
JULIA TOOAHNIPPAH (Goombi)

Plaintiffs

-VS-

CIVIL NO.

67-323

STEWART L. UDALL, Secretary  
of the Interior for the  
UNITED STATES OF AMERICA

Defendant

DORITA HIGH HORSE

Intervenor

---

Omer Luellen, Hinton, Oklahoma, for Plaintiff

Robert L. Berry, Assitant United States Attorney,  
Oklahoma City, Oklahoma, for Defendant

Houston Bus Hill, Oklahoma City, Oklahoma, for  
Intervenor

---

MEMORANDUM OPINION

---

Before LUTHER B. EUBANKS, United States District Judge

The plaintiff's are Comanche Indians who were named as beneficiaries under their deceased Comanche uncle's last will and testament which the Secretary of the Interior has declined to approve, and seek by this action to set aside the administrative decision which denied approval of the will, alleging it to be arbitrary, capricious, in excess of authority, without reasonable basis, and that it amounts to an abuse of discretion. 1/ The sole

---

1. Plaintiffs have attempted to invoke jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 701 et seq. The decisions do not appear to be entirely in harmony as to the scope of the jurisdiction conferred by the Administrative Procedure Act to grant review of administrative decisions in actions brought against the Secretary of the Interior for that purpose. There can be no doubt but that this court has jurisdiction under 28 U.S.C. §1361, and upon that basis jurisdiction is taken here, as it has been by this court upon other occasions, in order to effectuate the purposes of the Administrative Procedure Act by providing the review function which the act contemplates. Moreover, this court has heretofore considered and resolved to its satisfaction that there is no express limitation contained in the language of §2 of the Indian Probate Act, infra, which precludes judicial review of Indian will approval decisions. Unlike §1 of the act, which relates to the determination of the heirs of Indians who die without having made a will, §2 contains no language by which will approval decisions of

basis for denying approval is that the will failed to make provision for the intervenor, who was determined by the Secretary to be the decedent's daughter born out of wedlock, and as such to be entitled to inherit the entire estate as decedent's sole heir, in the absence of an approved will, by virtue of the provisions of 25 U.S.C. §371.

Congress has granted to Indians the right to make wills, subject only to the approval of the Secretary of the Interior. 2/ Such approval is

---

(Footnote continued from Page 28 )

the Secretary are made final and conclusive. See *Homovich v. Chapman*, 191 F.2d 761 (D. C. Cir. 1951); *Attocknie v. Udall*, 261 F. Supp. 876 (W.D. Okla. 1966).

2. The authority of the Secretary of the Interior to approve wills of Indians owning allotted lands is contained in § 2 of the Act of June 25, 1910, 36 Stat. 856, as amended by the Act of February 14, 1913, 37 Stat. 678, 25 U.S.C. § 373, which provides, in its essential details, that any Indians, except members of the Five Civilized Tribes or of the Osage Tribe, over the age of twenty-one years having any right, title or interest in any Indian lands or moneys held in trust by the United States or restricted upon alienation shall have the right to dispose of such property by will in accordance with regulations to be prescribed by the Secretary of the Interior. It further provides that such a will

(Footnote continued on Page 30)

requisite to validity. Lacking such approval an Indian will is totally without force and effect to dispose of the trust estate. The will which is the subject of this review has never received the required Secretarial approval and, therefore, is not a valid will; nor can it achieve the status of a valid will until such time as the approval required by the statute has been conferred. The question with which this court is concerned in the present action is whether the Secretary, in the circumstances presented, can properly withhold his approval of this will, which otherwise meets all of the requirements of a valid testamentary instrument, without such action amounting to an arbitrary denial of the decedent's statutory right to predetermine those persons to whom his trust estate shall devolve.

---

(Footnote continued from Page 29 )

shall not be valid nor have any force or effect unless it shall have been approved by the Secretary of the Interior; that the Secretary may approve or disapprove the will either before or after the death of the testator and where such a will has been approved and it is subsequently discovered that there was fraud in connection with the execution or procurement thereof, the Secretary of the Interior within one year after the death of the testator may cancel the approval of the will, and the property of the testator shall thereupon descent or be distributed in accordance with the laws of the state wherein the property is located.

The will which is the subject of the administrative decision under review in this action was made by George Chahsenah, an unallotted Comanche Indian, approximately seven months prior to his death. He died without having ever been married, and without leaving a surviving father, mother, brother or sister. He was the owner by inheritance of certain Indian property allotted in accordance with the provisions of the General Allotment Act of February 8, 1887 3/ which, under the provisions of his will, was devised to a niece and her children with whom, the record indicates, he resided for a considerable portion of the later years of his life. The hearing examiner found no lack of testamentary capacity, and that the will was not the product of fraud, duress, coercion, or undue influence. 4/

---

3. 24 Stat. 388. The act provides, inter alia, that the United States shall hold the lands in trust for the allottee during the existence of the trust period or any extension thereof, or, in case of his decease, for his heirs.
4. The administrative record discloses that the examiner held four separate formal hearings upon the decedent's will prior to the entry of his order of approval. The purpose of those hearings was to ascertain whether or not the will was entitled to receive the approval required by § 2 of the Indian Probate Act, supra. The examiner's authority to grant such approval is derived from a delegation of the Secretary's authority set out in the appropriate departmental regulations. The examiner found the will to be entitled to approval and he approved it.

In accordance with the applicable regulations 5/ the examiner entered an order which approved the will and decreed distribution of the estate in accordance with its provisions. A petition for rehearing was subsequently filed and denied by the examiner.

The hearing examiner found the decedent to have been survived by an adult daughter, Dorita High Horse, born out of wedlock, 6/ and that her mother and the decedent had cohabitated together in the custom and manner of Indian life sufficiently to entitle the daughter to inherit from the decedent under 25 U.S.C. §371. The effect of those findings is to make Dorita High Horse the decedent's sole heir at law, and thus entitled to inherit the decedent's entire estate in the absence of an approved will.

- 
5. The applicable regulations of the Secretary of the Interior are set out in Part 15 of 25 C.F.R. (1966 ed.).
  6. This court has not found the evidence of the decedent's paternity nearly as convincing as did the hearing examiner and the Regional Solicitor. The evidence in that regard which is contained in the administrative record is conflicting and, in my view, could have supported a finding to the contrary. I am intrigued by the singular fact that the mother of this putative daughter, Mary High, must have suffered from an equal lack of conviction of the decedent's paternity, as evidenced by her actions at the time of Dorita High Horse's birth. She attributed paternity to a different individual, and that individual is named as the father in the birth

(Footnote continued on Page 33)

The evidence in the administrative record indicates that the decedent and Dorita High Horse never maintained the usual father-daughter relationship. Their relationship can best be described as being that of casual acquaintances. The Regional Solicitor, in his administrative decision which rescinded the examiner's approval of the decedent's will, noted that fact. He stated: ". . . The record reflects that during his lifetime the decedent's only contribution toward the welfare of his daughter was to participate in her conception, to acknowledge her status as his daughter, and to visit briefly with her on rare occasions when they would by accident meet on public streets . . ."

Having been denied their petition for rehearing, the plaintiffs appealed to the Secretary of the Interior. Pursuant to authority delegated to the Solicitor of the Department of the Interior and redelegated to the Regional Solicitor, the latter reviewed the record and thereupon issued his decision which reversed the hearing examiner's order and withdrew the approval of the will which had been granted by the examiner. The Regional Solicitor's action constituted a final administrative decision

---

(Footnote continued from Page 32)

certificate which was prepared at the time. The only telling evidence in support of the finding is a skillfully typewritten letter, dated August 31, 1949, and obviously not prepared by the decedent, which is addressed to the Oklahoma Bureau of Vital Statistics and which is purported to be signed by the decedent, wherein it is stated that Dorita High is his daughter and that he was "perfectly willing for her to use his name as her name on her birth certificate or in school." The record would seem to indicate that, until she acquired the surname "Horse" as a result of her present marriage, she went by the surname of her mother.

which exhausted the administrative remedy and led to the filing of this action for review.

The Regional Solicitor, in support of his conclusion that approval was to be denied, stated in his decision that "When a purported will is submitted for approval and it has been determined that it meets the technical requirements for a valid will, further consideration must be given before approving or disapproving it to determine whether approval will most nearly achieve just and equitable treatment of the beneficiaries thereunder and the decedent's heirs-at-law."

The import of the Regional Solicitor's views is that an inequity will result should the decedent's estate be permitted to devolve upon a niece, who had provided the decedent with a home, and to her children, and thereby is denied to a putative daughter whose relationship with the decedent was only of the most casual nature. I find difficulty in following his reasoning to that conclusion. Moreover, there is danger in that course in that it provides no recognizable standard, thereby permitting the Secretary to go as near or as far in the grant of his sanction as his sympathies may lead him, in whatever direction, and conceivably could result in all manner of discretionary abuses.

Wills are a common feature of modern life. They are customarily made with only one purpose in view, that purpose being to alter the usual order of descent and distribution. Otherwise the act of making a will would be meaningless. The concept of the will making process is that the maker is provided with a method by which he can predetermine the persons to whom his estate shall devolve. It is not infrequent that those heirs who are not included in the will maker's bounty should appear to be victims of inequitable treatment. Equity plays no part in the will making process, as any heir who has been cut off without a dollar will vouchsafe. A will is the testator's last available means of rewarding those

who have befriended him during his lifetime and for evening the score with those who have not. It must be assumed that the will maker has his reasons, and that they are valid.

Congress has conferred the will making right upon all adult Indians. The only limitation upon that right is that the will must be approved by the Secretary of the Interior. It is incumbent upon the Secretary that he not lose sight of the fact that the will making right has been conferred upon the Indian and not upon the Secretary. Surely there must be a point beyond which the Secretary cannot go in withholding his approval before his act of disapproval is to amount to an arbitrary denial of the statutory will making right.

Where disapproval is founded upon some rational basis, denial of approval of an Indian will cannot be said to be an abuse of discretion. 7/ Examples of what may constitute reasonable bases upon which

---

7. It is a well-established proposition that administrative action must have a "reasonable" or "rational" basis if it is to avoid the stigma of arbitrariness. *Securities & Exchange Commission v. Chenery Corp.*, 332 U.S. 194, 67 S. Ct. 1575, 91 L.Ed. 1995 (1947); *Unemployment Compensation Commission of Territory of Alaska v. Aragan*, 329 U. S. 143, 67 S. Ct. 245, 91 L. Ed. 136 (1946); *Dell Publishing Co. v. Summerfield*, 198 F. Supp. 843 (D.D.C. 1961), aff'd, 303 F. 2d 766 (D.C. Cir. 1962); *Mississippi Valley Barge Line Co. v. United States*, 292 U. S. 282, 54 S. Ct. 692, 78 L. Ed. 1260 (1934); *Eastern Central Motor Carriers Ass'n. v. United States*, 239 F. Supp. 243 (D.D.C. 1965)

approval may be denied are lack of testamentary capacity, fraud, duress, coercion, undue influence, overreaching, substantially changed conditions as to the decedent's heirs or estate occurring subsequent to the making of the will, and improvident disposition. In the decision now under review, the will was denied approval because the decedent had failed to make provision for a daughter born out of wedlock. In *Attocknie v. Udall*, 261 F. Supp. 876 (W.D. Okla. 1966), this court upheld a decision of the Secretary which granted approval to an Indian will in exactly opposite circumstances from those presented here. In that case approval was granted to a will wherein no provision was made for a son born out of wedlock. I am unable to perceive the distinction wherein that will was considered to be susceptible of approval but the will which is the subject of this review was not considered to be susceptible of being accorded the same treatment.

This decedent's will was not an unnatural one in light of the circumstances. Someone has lost sight of the fact here that Congress has conferred the right to make a will upon the Indian and not upon the Secretary. The Secretary can no more use his approval powers to substitute his will for that of the Indian than he can dictate its terms. If the will making right is to be meaningful the Indian must be given a free hand to decide upon those persons who shall be the objects of his bounty without unreasonable Secretarial interference. I find that the denial of approval of the last will and testament of George Chahsenah lacks a rational basis and is an unreasonable and arbitrary denial of a right conferred upon him by Congress.

The motion of the plaintiff is granted, the motions of the defendant and the intervenor are denied, and the will is remanded to the Secretary of the Interior with directions to approve it and distribute the decedent's estate in accordance with its provisions.

Counsel for Plaintiff will prepare formal judgment in accordance herewith.

The Clerk will mail a copy hereof to all counsel of record.

Dated this 18th day of December, 1967.

(Sgd.) Luther B. Eubanks

---

Luther B. Eubanks

United States District Judge

IN THE UNITED STATES DISTRICT COURT

ORDER AND JUDGMENT

This cause came on to be heard on the Motion of the Defendant, Stewart L. Udall, Secretary of the Interior for the United States of America for Summary Judgment and on the Motion of the Intervener, Dorita High Horse for Summary Judgment, and on the Cross-Motion of the Plaintiffs, Viola Atewoofatakewa (Tate), Frankie Lee Tooahnippah, Vila Tooahnippah, and Julia Tooahnippah (Goombi) for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the Court having considered the administrative record of the testimony, pleadings, and files on file herein relative to the probate of the Will of George Chahsenah, deceased Comanche Unallottee, and all of the parties herein having furnished their written Briefs to the Court upon the issues herein, and the Court having determined that this Court has jurisdiction of the said Action, and the Court having found that the denial of the approval of the last Will and Testament of George Chahsenah, deceased, dated March 14, 1963, by the Secretary of the Interior lacks a rational basis and is an unreasonable and arbitrary denial of the right of George Chahsenah to make his last Will and Testament as conferred upon him by Congress, and due deliberation having been had thereon, and the decision of this Court having been filed herein, it is

ORDERED that the Defendant's Motion for Summary Judgment be and the same hereby is denied, and it is further

ORDERED that the Intervener's Motion for Summary Judgment be and the same hereby is denied, and it is further

ORDERED that the Plaintiff's Cross-Motion for Summary Judgment be and the same is hereby granted, and it is further

ORDERED, ADJUDGED AND DECREED that the last Will and Testament dated March 14, 1963, of George Chahsenah, deceased Comanche Unallottee, is remanded to the Secretary of the Interior for the United States, and it is further

ORDERED, ADJUDGED AND DECREED that the Secretary of the Interior approve the last Will and Testament of George Chahsenah, deceased, and distribute his Estate in accordance with the provisions of the decedents last Will and Testament.

Dated this 28 day of December, 1967.

(Sgd.) Luther B. Eubanks

Luther B. Eubanks

United States District Judge

IN THE UNITED STATES DISTRICT COURT

ORDER FOR SUBSTITUTION OF DECEASED  
PARTY PLAINTIFF

This cause coming on for hearing on the 8th day of February, 1968, on the Motion of the Plaintiffs for the Substitution of James Tooahimpah Tate as one of the Plaintiffs in place of Viola Atewoofatakewa (Tate), deceased, and it appearing to the Court that Viola Atewoofatakewa (Tate), one of the above named Plaintiffs, died intestate on the 26th day of Novmeber, 1967, and no legal representative has been appointed for her estate.

It further appearing to the Court that a Judgment was rendered in the above styled matter on the 28th day of December, 1967, and that this is an action and judgment requiring the Secretary of the Interior to approve the Will of George Chahsenah whose Will was dated March 14, 1963, and it further appearing to the Court that the claim and judgment of the Plaintiff Viola Atewoofatakewa (Tate) as an heir at law, devisee and legatee of George Chahsenah was not extinguished by the death of Viola Atewoofatakewa (Tate).

It further appearing to the Court that James Tooahimpah Tate is the surviving husband of Viola Atewoofatakewa (Tate), now deceased, and that he should be substituted as one of the Plaintiffs herein in place of Viola Atewoofatakewa (Tate), his deceased wife.

IT IS ORDERED that James Tooahimpah Tate be substituted as one of the Plaintiffs herein in place of Viola Atewoofatakewa (Tate), deceased, without prejudice to any proceedings, including Judgments heretofore had in this

action and that the title of the action, including the Judgment herein, be amended accordingly.

(Sgd.) Luther B. Eubanks  
Luther B. Eubanks,  
District Judge for the  
Western District of  
Oklahoma

IN THE UNITED STATES DISTRICT COURT

NOTICE OF APPEAL

Notice is hereby given that Stewart L. Udall, Secretary of the Interior for the United States, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the judgment entered in this action on December 18, 1967. The Appellant herein is Stewart L. Udall, and the Appellees are James Tooahimpah Tate, Frankie Lee Tooahnippah, Vila Tooahnippah, and Julia Tooahnippah (Goombi).

B. ANDREW POTTER  
United States Attorney

(Sgd.) Robert L. Berry  
ROBERT L. BERRY  
Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT

NOTICE OF APPEAL

Notice is hereby given on this 23rd day of February, 1968, that Intervener-Defendant, Dorita High Horse, on her own behalf hereby Appeals to the United States Court of Appeals for the Tenth Circuit from the judgment entered by this Court in this action on December 28, 1967, and the action of the Court on said date in denying Intervener's and Defendant's Motion for Summary Judgment and granting judgment for the plaintiffs. The Court's judgment reverses the Secretary of Interior's decision of June 20, 1967, A-T-4 (Exhibit 1-1) of Intervener's Motion for Summary Judgment filed September 27, 1967.

This Appeal is taken pursuant to Rule 12 of the Tenth Circuit Court of Appeals and Rule 73 of the Federal Rules of Civil Procedure.

Respectfully submitted,

(Sgd.) Houston Bus Hill  
Houston Bus Hill  
1415 First National  
Building  
Okla. City, Okla. 73102  
Attorney for Intervener

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

---

JANUARY, 1969, TERM

---

DORITA HIGH HORSE,

Appellant,

vs.

Number  
9979

JAMES TOOAHIMPAH TATE,  
FRANKIE LEE TOOAHNIPPAH,  
VILA TOOAHNIPPAH and  
JULIA TOOAHNIPPAH (GOOMBI),

Appellees.

STEWART L. UDALL, SECRETARY  
OF THE INTERIOR, DEPARTMENT  
OF INTERIOR OF THE UNITED  
STATES OF AMERICA,

Appellant,

vs.

Number  
9980

JAMES TOOAHIMPAH TATE,  
FRANKIE LEE TOOAHNIPPAH,  
VILA TOOAHNIPPAH and  
JULIA TOOAHNIPPAH (GOOMBI),

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Houston Bus Hill, Oklahoma City, Oklahoma, for  
Appellant, Dorita High Horse;

Clyde O. Martz, Assistant Attorney General,  
Washington, D. C. (B. Andrew Potter, United States  
Attorney, Oklahoma City, Oklahoma, Robert L. Berry,  
Assistant United States Attorney, Oklahoma City,  
Oklahoma, S. Billingsley Hill and John G. Gill, Jr.,  
Attorneys, Department of Justice, Washington, D. C.  
on the brief) for Appellant, Stewart L. Udall,  
Secretary of the Interior.

Omer Luellen, Hinton, Oklahoma, for Appellees.

Before MURRAH, Chief Judge, and PHILLIPS and HILL,  
United States Circuit Judge.

PER CURIAM.

This litigation originated with the filing of a  
complaint in the United States District Court for  
the Western District of Oklahoma by the appellees  
in the two consolidated appeals before us. The  
action sought judicial review of the orders of the  
Secretary of the Interior and his subordinates.  
Jurisdiction was invoked under the Administrative  
Procedure Act and 28 U.S.C. § 1391. The trial  
court took jurisdiction under § 1391, sustained  
a Motion for Summary Judgment filed by the plain-  
tiffs, appellees here, and reversed the order  
of the Secretary and his subordinates.

The basic facts are without dispute. One  
George Chahsenah, a Comanche Indian, died, leaving

a will dated March 4, 1963, and by this instrument left all of his estate consisting of Indian Trust property to his niece and her three children, who are the appellees in both appeals. 1/ Pursuant to 25 U.S.C. §§ 372 and 373, after hearings, a Department of Interior Examiner of Inheritance approved the will and ordered distribution of the estate accordingly. Appellant, Dorita High Horse, the natural daughter of the testator, contested the will before the Examiner and appealed the decision to the Secretary of the Interior.

The Secretary reviewed the record, approved the findings of fact made by the Examiner, including a finding that Dorita was the natural daughter and only heir-at-law of the decedent, and ruled that it was "inappropriate" to perpetuate this utter disregard for the daughter's welfare by lending his approval to decedent's will." He disapproved the will and ordered distribution to Dorita High Horse, as the sole heir of decedent. The filing of this action followed and Dorita intervened to assert her rights under the decision of the Secretary.

At the outset we are confronted with the question of jurisdiction, which was raised in the trial court and argued here by appellees. A lengthy discussion of the question is not necessary because

- 
1. The record shows that the decedent had executed five prior wills. The first in 1956 left his property to a niece; the second in 1957 left his property to a friend; the third in 1959 left his property to a different friend; the fourth in favor of a nephew; and the fifth devised his estate to a cousin. None of his wills contained any reference to appellee Dorita High Horse, his daughter.

this court, in two recent decisions, has denied jurisdiction of the courts to review orders of the Secretary concerning either intestate succession of restricted Indian property or the approving or disapproving of wills affecting restricted Indian property. In a well reasoned opinion in Heffelman v. Udall, 378 F.2d 109 (1967), Judge Lewis held that sections 1 and 2 of 25 U.S.C. § 372 precluded judicial review of such orders in any action brought under 28 U.S.C. § 1331, § 1361, § 1391 or § 2201. In Attocknie v. Udall, 390 F. 2d 636 (1968), cert. den. October 14, 1968, this court reaffirmed the teachings of Heffelman, and we certainly are not disposed to disturb the law of those cases.

For the reasons stated in Heffelman v. Udall, supra, and Attocknie v. Udall, supra, the judgment of the trial court is Vacated and the case is Remanded with directions to dismiss the action for want of jurisdiction.

filed  
United States Court of Appeals  
Tenth Circuit

MAR 3 1969

William L. Whittaker  
Clerk

JANUARY TERM, MARCH 3rd, 1969.

Before Honorable Alfred P. Murrah, Chief  
Judge, and Honorable Ori L. Phillips  
and Honorable Delmas C. Hill, Circuit  
Judges.

Dorita High Horse,		}	
Appellant,			
9979	vs.	}	Appeal from the
			United States
James Tooahimpah Tate,		}	District Court
Frankie Lee Tooahnippah,			for the Western
Vila Tooahnippah and		}	District of
Julia Tooahnippah			Oklahoma.
(Goombi),		}	
Appellees.			

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that for the reasons stated in Heffelman v. Udall, 378 F.2d 109 (1967) and Attocknie v. Udall, 390 F.2d 636 (1968) cert. den. October 14, 1968, the judgment of the trial court is vacated and the case is remanded with directions to dismiss the action for want of jurisdiction. It is further ordered that appellant have and recover of and from appellees her costs herein.

WILLIAM L. WHITTAKER, Clerk

By (Sgd.) Gladys E. Hobbs  
Deputy Clerk.

Costs of appellant:  
Clerk: Flat Fee \$25.00

JANUARY TERM, MARCH 3rd, 1969.

Before Honorable Alfred P. Murrah, Chief Judge, and Honorable Orie L. Phillips and Honorable Delmas C. Hill, Circuit Judges.

Stewart L. Udall, Secretary  
of the Interior, Department  
of Interior of the United  
States of America,

Appellant,

9980

**VS.**

James Tooahimpah Tate, Frankie  
Lee Tooahnippah, Vila  
Tooahnippah and Julia  
Tooahnippah (Goombi),

Appellees.

Appeal from the  
United States  
District Court  
for the Western  
District of  
Oklahoma.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that for the reasons stated in *Heffelman v. Udall*, 378 F.2d 109 (1967), and *Attocknie v. Udall*, 390 F.2d 636 (1968) cert. den. October 14, 1968, the judgment of the trial court is vacated and the case is remanded with directions to dismiss the action for want of jurisdiction.

WILLIAM L. WHITTAKER, Clerk

By (Sgd.) Gladys E. Hobbs

Deputy Clerk.

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

---

No. 9979

---

DORITA HIGH HORSE,  
Appellant,

VERSUS

JAMES TOOAHIMPAH TATE, ET AL.,  
Appellees.

---

No. 9980

---

STEWART L. UDALL, SECRETARY OF THE INTERIOR, DE-  
PARTMENT OF INTERIOR OF THE UNITED STATES  
OF AMERICA,

Appellant,

VERSUS

JAMES TOOAHIMPAH TATE, ET AL.,  
Appellees.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

PETITION FOR REHEARING OF JAMES  
TOOAHIMPAH TATE, ET AL., APPELLEES.

---

The Appellees above named respectively  
Petition this Honorable Court for a rehearing of  
the Appeal in the above entitled causes and in  
support of their Petition, represent and state  
to the Court as follows:

This Honorable Court rendered its Opinion  
on March 3, 1969, in which Opinion the Judgment  
of the Trial Court was vacated and the case  
remanded with directions to dismiss for want of  
jurisdiction and the said Opinion gave as  
authority for its decision herein Heffelman v.  
Udall, 378 F.2d 109 (1967). In Heffelman,  
Judge Lewis of the Tenth Circuit held that as  
long as an Indian allotment remains subject  
to the control of the Secretary sections 1 and  
2 of the Act of June 25, 1910 should be viewed  
as complementing each other with respect of  
the finality of the administrative determina-  
tion of facts and Section 1 having been  
previously held unreviewable by the Court,  
therefore Heffelman held that Section 2 relative  
to approval or disapproval of the Wills of  
Indians by the Secretary was unreviewable in  
the Courts. In the last paragraph of Heffelman  
we find the following statement:

"The administrative record, other  
than the decision (which indicates  
consideration of these allegations  
and concludes that appellant was  
afforded full opportunity to  
present his claims), is not before  
us. We thus conclude that the  
trial court properly held that  
jurisdiction did not exist under  
28 U.S.C. § 1331 (federal question);

28 U.S.C. § 1361 (mandamus, see Prairie Band of Pottawatomie Tribe of Indians v. Udall, 10 Cir., 355 F.2d 364, 367); 28 U.S.C. § 1391 (e) (venue); or 28 U.S.C. § 2201 (declaratory judgment).

The judgment is affirmed.

Your Petitioners further state that in Heffelman Judge Lewis stated that the Trial Court in Heffelman properly held that jurisdiction did not exist under 28 U.S.C. § 1361.

Your Petitioners further state that Judge Eubanks, the Trial Court, in the case under consideration, Atewooftakewa v. Udall, 277 F. Supp. 464 (1967) stated in footnote 1 as follows:

"There can be no doubt but that this court has jurisdiction under 28 U.S.C. § 1361, and upon that basis jurisdiction is taken here, as it has been by this court upon other occasions, in order to effectuate the purposes of the Administrative Procedure Act by providing the review function which the act contemplates."

Therefore, we see in the Trial Court of this case, jurisdiction was taken by Judge Eubanks under 28 U.S.C. § 1361.

Your Petitioners further state that in Heffelman on appeal, the principal considera-

tion of the Court was that APA did not apply and permit judicial review because of the final and conclusive clause of Section 1 and Section 2 of the Act of 1910, but the Court of Appeals in Heffelman also stated that the Trial Court in Heffelman properly held that there was no jurisdiction under 28 U.S.C. § 1361, which is the exact converse of what the Trial Court did in this case as jurisdiction was expressly taken by the Trial Court under the authority of 28 U.S.C. § 1361, therefore Heffelman is not proper authority to reverse this case.

Your Petitioners further state that Judge Eubanks, the Trial Court herein, further stated as follows:

"Congress has conferred the will making right upon all adult Indians. The only limitation upon that right is that the will must be approved by the Secretary of the Interior. It is incumbent upon the Secretary that he not lose sight of the fact that the will making right has been conferred upon the Indian and not upon the Secretary. Surely there must be a point beyond which the Secretary cannot go in withholding his approval before his act of disapproval is to amount to an arbitrary denial of the statutory will making right."

and the Trial Court held that the denial of the approval of the Will by the Secretary of the Interior acting by and through the Regional Solicitor of George Chahsenah lacked a rational basis and was an unreasonable and arbitrary denial of the right conferred by Congress upon the decedent Indian to make his Will, and there-

fore the Trial Court directed in the nature of a mandamus that the Secretary of the Interior approve the Will of the decedent Indian and distribute his estate in accordance with the provisions of the said Will.

Your Petitioners further state that they believe upon further study, this Honorable Court will ascertain that Heffelman is not a proper authority to reverse the Trial Court in this case because the Trial Court herein took jurisdiction pursuant to 28 U.S.C. § 1361 and by his decision in the nature of a mandamus directed the Secretary of the Interior to approve the Will of the decedent Indian. In Heffelman, Judge Lewis definitely stated that he concluded that the Trial Court held that jurisdiction did not exist under 28 U.S.C. § 1361 in Heffelman and that is the exact reverse of what the Trial Court did in this case because Judge Eubanks took jurisdiction under 28 U.S.C. § 1361 which, apparently was not done in Heffelman because in Heffelman the primary consideration was jurisdiction under APA as same applied as final and conclusive in the Act of 1910, Section 1 and Section 2.

Your Petitioners herein further state that they believe that Smith v. McNamara 395 F.2d 896 (1968) is persuasive authority for the decision rendered in the Trial Court by Judge Eubanks for taking jurisdiction in the case under consideration pursuant to 28 U.S.C. § 1361.

Your Petitioners further respectfully state that the Trial Court herein held that the Secretary of the Interior refused to approve the Will of the decedent Indian because the Secretary of the Interior acting by and through

the Regional Solicitor was of the opinion that the said Will did not achieve a just and equitable treatment of the alleged heirs of the decedent Indian and that the action of the Secretary was an arbitrary denial of the statutory rights of the Indian to make his Will as granted by Congress and was therefore subject to an Order directing the Secretary to approve the Will, which Order is in the nature of a mandamus, and the Trial Court further held that the denial of the approval of the Will by the Secretary of the Interior did not have a rational basis and was in a disabuse of his discretion and that the equitable reason given by the Secretary of the Interior for disapproving the Will of the decedent Indian was not a valid reason for denying the approval of the Will, and your Petitioners further state that *Hanson v. Hoffman, et al.*, 113 Fed. Reporter 2d 780 has set out the valid reasons for the disapproval of the Will of an Indian as follows:

"The restricted property and trust funds still being under the administrative control of the Secretary of the Interior, there can be no doubt of the power of the Secretary to have set aside the approval of the Will on the ground of fraud in the execution or procurement of the will within one year from the date of the death of Benjamin, and to set aside the approval at any time on the ground of lack of testamentary capacity, undue influence, or failure to comply with the rules and regulations in connection with the execution of the will, or on the ground of fraud, failure of subordinate officers to report the true facts of the Secretary, or other like grounds whereby approval

of the will was induced. Lane v. U.S. ex rel. Mickadiet, 241 U.S. 201, 207-209, 36 S. Ct. 599, 60 L.Ed. 956; Nimrod v. Jandron, 58 App. D. C. 38, 24 F. 2d 613."

Your Petitioners further state that the equitable reason given by the Secretary of the Interior acting by and through the Regional Solicitor for the disapproval of the decedent Indians Will in this case was not a valid or legal reason for the failure to approve the Will of the decedent Indian, therefore by the arbitrary denial of the right of the Indian to make a Will and have same approved, the Secretary of the Interior is subject to an Order to approve said Will in the nature of a mandamus as he was directed and ordered to so do by the Trial Court herein, pursuant to the jurisdiction granted by 28 U.S.C. § 1361.

Your Petitioners further state that the final and conclusive provision found in 25 U.S.C. § 372 and by Heffelman applied to 25 U.S.C. § 373 is not in accordance with the present thinking of the United States Supreme Court and as more particularly exemplified in Abbott Laboratories v. Gardner, 387 U. S. 136, 87 S. Ct. 1507 (1967) which case was decided on May 22, 1967. This case pertains to pre-enforcement review of the Federal Food, Drug, and Cosmetic Act, but your Petitioners believe that the thinking of the Court is very persuasive herein and particularly wherein the Supreme Court states as follows:

"Early cases in which this type of judicial review was entertained, e.g., Shields v. Utah Idaho Central R. Co., 305 U.S. 177, 59 S.Ct. 160, 83 L.Ed. 111; Stark v. Wickard, 321 U. S. 288, 64 S. Ct. 559, 88

L.Ed. 733, have been reinforced by the enactment of the Administrative Procedure Act, which embodies the basic presumption of judicial review to one 'suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute,' 5 U. S. C. § 702, so long as no statute precludes such relief or the action is not one committed by law to agency discretion, 5 U.S.C. § 701 (a). The Administrative Procedure Act provides specifically not only for review of '(a) agency action made reviewable by statute' but also for review of 'final agency action for which there is no other adequate remedy in a court,' 5 U.S.C. § 704. The legislative material elucidating that seminal act manifests a congressional intention that it cover a broad spectrum of administrative actions,<sup>2</sup> and this

---

2 See H.R. Rep. No. 1980, 79th Cong., 2d Sess., 41 (1946), U.S. Code Cong. Serv. 1946, p. 1195; 'To preclude judicial review under this bill a statute, if not specific in withholding such review, must upon its face give clear and convincing evidence of an intent to withhold it. The mere failure to provide specially by statute for judicial review is certainly no evidence of intent to withhold review.'

Court has echoed that theme by noting that the Administrative Procedure Act's generous review provisions' must be given a 'hospitable' interpretation. *Shaughnessy v. Pedreiro*, 349 U.S. 48, 51, 75 S. Ct. 591, 594, 99 L.Ed. 868; see *United States v. Interstate Commerce Comm'n*, 337 U.S. 426, 433-435, 69 S. Ct. 1410, 1414-1415, 93 L.Ed. 1451; *Brownell v. We Shung*, *supra*; *Heikkila v. Barber*, *supra*. Again in *Rusk v. Cort*, *supra* 369 U.S. at 379-380, 82 S.Ct. at 794, the Court held that only upon a showing of 'clear and convincing evidence' of a contrary legislative intent should the courts restrict access to judicial review. See also, *Jaffe, Judicial Control of Administrative Action* 336-359 (1965)."

Your Petitioners further state that *Udall v. Taunah*, 198 F.2d 795 (1968), which Opinion was promulgated by Judge Hill of the Tenth Circuit is also persuasive for this Honorable Court to grant a rehearing in this case. In the *Taunah* case it was held that the Federal Court may issue a mandamus to require the exercise of permissible discretion by the Secretary of the Interior. In *Taunah* it was held that the Secretary had not exercised the proper discretion because the proper administrative hearings had not been consummated. The Secretary was directed by the Court to proceed with the proper administrative hearings to either approve or disapprove the family contract after the hearings had been completed. In this case, it is the opinion of the Petitioners, that the Trial Court properly held that the Secretary failed to perform his ministerial duty to approve the Will of the decedent Indian because there was no legal reason given by the Secretary for his disapproval of the said Will, except that equity had not been

consumated by the heirs and if that is the only reason given by the Secretary for the failure to approve the Will, he has thereby failed to perform his ministerial duty to approve the Will and the Secretary could be directed and was directed by the Trial Court to approve the Will in the nature of a mandamus because it became a ministerial duty of the Secretary to approve the Will if after administrative hearings had been consumated there was no legal reason to disapprove the Will of the decedent Indian, which was the situation herein and jurisdiction, of course, is granted pursuant to 28 U.S.C. § 1361.

Your Petitioners further state that this Honorable Court has cited for authority to deny jurisdiction herein *Attocknie v. Udall*, 390 F.2d 636. Your Petitioners believe that *Attocknie v. Udall* can be distinguished from the case under consideration because the Trial Court in *Attocknie v. Udall*, 261 F. Supp. 876 took jurisdiction under the APA and the gist of the decision of the Trial Court was:

"this Court must hold that there was substantial evidence that the testator was, at the time the will was executed, of sound mind and disposing memory, that such evidence was sufficient to support an administrative determination that there was no lack of testamentary capacity, that the decedent's denial of paternity of a child born out of wedlock is not sufficient, standing alone, to prove the existence of an insane delusion"

The Trial Court in the *Attocknie* case did not take jurisdiction under 28 U.S.C. § 1361 as was

taken by the Trial Court in the case of your Petitioners. The gist of the Trial Courts decision in Attocknie pertains to a question of fact as to the testamentary capacity of the testator and as to whether he was competent or incompetent and particularly as to whether he was suffering from an insane delusion, which, of course, was not the situation in this case, and as heretofore stated, the Trial Court herein took jurisdiction to direct the approval of the Will by the Secretary of the Interior because his reason for disapproving the Will was arbitrary etc. Jurisdiction, therefore that was taken herein by the Trial Court is permissive under 28 U.S.C. § 1361. Your Petitioners agree that final and conclusive would be more germane and would probably apply where there is question of fact as to whether the testator was competent or incompetent or suffering from an insane delusion.

Your Petitioners further state that the decedent Indian was given the right to make his Will by Congress and it was never the intent and purpose of Congress to give the Secretary of the Interior the arbitrary authority to disapprove the Will of an Indian for equitable reasons. Your Petitioners give as an extreme example, the example of the Secretary of the Interior giving as his reason for disapproving the Will of the decedent Indian the reason that the decedent Indian was a member of the Apache Tribe of Indians and that the Apache Indian Tribe had been a murderous group of Indians and therefore the Will of an Apache Indian should not be and would not be approved by the Secretary of the Interior. Your Petitioners further believe that any Court would take jurisdiction under such a factual situation and particularly under authority of 28 U.S.C.

§ 1361 and thereby direct the Secretary of the Interior by an order in the nature of a mandamus to approve the Will of the decedent Indian if his only reason for disapproving the Will of the decedent Indian was the reason that the decedent Indian was a member of the Apache Tribe of Indians.

Your Petitioners, therefore, state that for the foregoing reasons, this Petition for Rehearing should be granted and your Petitioners respectively request oral argument if the Court so desires.

(Sgd.) Omer Luellen  
Omer Luellen, Attorney for  
James Tooahimpah Tate, et  
al., the Petitioners herein  
and the Appellees herein.

(Verification omitted in printing)

Before Honorable Alfred P. Murrah, Chief  
Judge, and Honorable Orié L. Phillips and  
Honorable Delmas C. Hill, Circuit Judges.

Dorita High Horse, et al.,	)	
Appellants,	)	
	)	
vs.	)	9979-9980
	)	
James Tooahimpah Tate	)	
et al.,	)	
	)	
Appellees.	)	

These causes came on to be heard on the  
motion of appellees for a rehearing herein and were  
submitted to the court.

On consideration whereof, it is ordered  
that the said petition be and the same is here-  
by denied.

Before William L. Whittaker, Clerk.

April 8, 1969.

MAY TERM, JUNE 20, 1969

Before Honorable Alfred P. Murrah, Chief Judge

Dorita High Horse,

Appellant,

vs.

No. 9979

James Tooahimpah Tate,  
Frankie Lee Tooahnippah,  
Vila Tooahnippah, and  
Julia Tooahnippah (Goombi),

Appellee.

Stewart L. Udall, Secretary  
of the Interior for the  
United States,

Appellant,

vs.

No. 9980

James Tooahimpah Tate,  
Frankie Lee Tooahnippah,  
Vila Tooahnippah, and  
Julia Tooahimpah (Goombi),

Appellees.

On motion of appellee's administrator of the estate of Frankie Lee Tooahnippah, deceased, be and is hereby substituted for Frankie Lee Tooahnippah, now deceased.

it is ordered that  
administrator of the  
Tooahnippah, deceased, be  
for Frankie Lee

LAST WILL AND TESTAMENT  
of

George Chahsenah Allottee No. Unallotted Comanche  
Age Born 1908

I, George Chahsenah of the Comanche Tribe, of the State of Oklahoma, being of sound and disposing mind, realizing the uncertainty of human life, do make this my Last Will and Testament hereby revoking all former wills by me made, in manner and form following, that is to say:

FIRST. - I desire that all my legal debts be paid, including the expenses of my last illness, funeral, and burial.

SECOND. - I give, devise, and bequeath to - My niece, Viola Atewooflakewa, and her son, Frankie Lee Tooahnippah, in equal shares, all of my interest in the allotment of Wahahrockah, Comanche 2326.

THIRD: I give, devise and bequeath to Vila Tooahnippah, Julia Tooahnippah, daughters of Viola Atewooflakewa, in equal shares, all of my interest in the allotment of Sarah Chahsenah, Comanche 2778.

FOURTH: I leave nothing to my heirs at law except those persons hereinbefore mentioned for the reason that they have shown no interest in me.

I give, devise and bequeath all of the rest and residue of my estate, real, personal, and mixed, to: Viola Atewooflakewa, Frankie Lee Tooahnippah, Vila Tooahnippah and Julia Tooahnippah, in equal shares.

In witness whereof, I, George Chahsenah, have hereunto set my hand, sealed, published, and declared this to be my Last Will and Testament, this 14th day of March, in the year of our Lord one thousand nine hundred and sixty-three.

Witnesses:

/s/ John Paul Buzbee      /s/ George Chahsenah ( L.S.)

Residing at Anadarko, Oklahoma

/s/ Carolyn Nation

Residing at Anadarko, Oklahoma

The foregoing instrument of writing was here and now signed by George Chahsenah in our presence, and at his request and in the presence of each other we have signed as witnesses and he has published and declared this to be his (her) Last Will and Testament.

/s/ John Paul Buzbee

Residing at Anadarko,  
Oklahoma

/s/ Carolyn Nation

Residing at Anadarko,  
Oklahoma

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE EXAMINER OF INHERITANCE

Pursuant to the provisions of the Act of February 14, 1913 (37 Stat. 678), and the provisions of 25 CFR 81, the within will is hereby APPROVED in accordance with the Order of even date herewith.

Done at the City of Tulsa, Oklahoma.

/s/ Kent R. Blaine  
Kent R. Blaine,  
Examiner of Inheritance.

INSTRUCTIONS TO FIELD OFFICERS

1. The testator may sign by thumb mark. The witnesses must be able to write, and should not be interested as heirs or devisees.
2. Inquire carefully into the immediate family of testator. If a husband, wife, child or grandchild who is an heir is given nothing, the reason must be set out.
3. Witnesses and testator must sign in the presence of each other. Read the will carefully to testator and be sure that he understands it and that it expresses his wishes.
4. Whenever possible, include the name, allotment number, if any, age, residence, tribe, and relationship of each devisee, specific description of lands devised, and in case of inherited interests the name and allotment number of original allottee and interest of testator therein.

5. Explain fully to testator that fractional interests are of little or no value to a devisee if further divided, and that the entire interest in a specific piece of land is much more valuable than a fractional interest. The testator does not have to give the residue to "my heirs at law," he can give the residue to one person if he wishes. If he gives the residue to one person it prevents further divisions; if he gives it to several persons or to his "heirs at law" a further division takes place. He may also give all his estate or the residue to the Tribe (naming it) if he wishes.

U.S. Government Printing Office  
16-68692-1

AFFIDAVIT TO ACCOMPANY INDIAN WILL

STATE OF OKLAHOMA        )  
                              ) ss:  
COUNTY OF CADDO        )

I, George Chahsenah, being first duly sworn on oath, depose and say: That I am an enrolled member of the Comanche Tribe of Indians in the State of Oklahoma; that on the 14th day of March, 1963, I requested John Paul Buzbee and Carolyn Nation to act as witnesses thereto, that the said witnesses heard me publish and declare the same to be my last will and testament; that I signed said will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; that the said will was read and explained to me (or read by me), after being prepared and before I signed it; and it clearly and accurately expresses my wishes;

and I further state that no person has influenced me to make disposition of any part of my property in any other manner than I myself of my own free will desire and wish to dispose of it.

\*

/s/ George Chahsenah  
Allottee No. Unallotted

We, John Paul Buzbee and Carolyn Nation, each being first duly sworn, on oath, depose and state: That on the 14th day of March, 1963, George Chahsenah, a member of the Comanche Tribe of Indians of the State of Oklahoma, published and declared the attached instrument to be his (her) last will and testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses in his (her) presence and in the presence of each other; that said testator (testatrix) was not acting under duress, menace, fraud or undue influence of any person, so far as we could ascertain and in our opinion was mentally capable of disposing of all his (her) estate by will, and that neither of us is named as a beneficiary in said will or in any wise interested in the distribution of the estate of said testator (testatrix).

/s/ John Paul Buzbee

/s/ Carolyn Nation

\*At this point should be inserted the tribe and allotment or other identifying numbers of the devisees and beneficiaries and their relationship to the testator or testatrix (unless this information is shown in the body of the will), and the testator's or testatrix's reasons for making the devises, particularly when the immediate relatives are given little or none of the estate.

I, John Paul Buzbee, being first duly sworn, on oath depose and say:

That I am employed as General Attorney at Anadarko, in the State of Oklahoma; that on the 14th day of March, 1963, George Chahsenah, an enrolled member of the Comanche Tribe of Indians in the State of Oklahoma, requested me to prepare his (her) last will and testament; that I prepared the attached will and read (or had read by the interpreter) said will to testator (testatrix) and he (she) then stated that said instrument was drawn in accordance with his (her) own wishes as previously stated to me; that said testator (testatrix) was not, so far as I could ascertain, acting under duress, menace, fraud or undue influence of any person, and in my opinion was mentally capable of disposing of his (her) estate by will; that he (she) signed the same and published and declared it to be his (her) last will and testament before John Paul Buzbee and Carolyn Nation, whom he (she) requested to act as witnesses thereto; that there were present in the room with the testator (testatrix) at said time besides myself and the above-named witnesses, the following named persons:  
Florence C. Hutton.

/s/ John Paul Buzbee

Subscribed and sworn to before me this 14th day of March, 1963, by George Chahsenah, John Paul Buzbee and Carolyn Nation.

/s/ Florence C. Hutton  
Notary Public

My commission expires 12/24/66.

(Note: Instructions to Field Officers are printed on the reverse side of the will forms and are contained in the Transcript at Page 243.)

---

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Office of the Solicitor  
Office of the Examiner of Inheritance  
712 Petroleum Building  
Tulsa, Oklahoma 74103

PROBATE  
H-173-66  
KRB

IN THE MATTER OF THE	)	
ESTATE OF:	)	
George Chahsenah,	)	ORDER APPROVING
deceased Comanche	)	WILL AND DECREE-
Unallottee	)	ING DISTRIBUTION

This case coming on to be heard before the Examiner of Inheritance, Office of the Solicitor, Tulsa, Oklahoma, and upon submission of the evidence, the following facts and conclusions of law are presented.

Four separate formal hearings were held in this estate. Notices of the first hearing were duly served upon the known probable heirs, devisees and other interested parties prior to that hearing by mailing a copy of such notice to each of them at their last known mailing address, and by posting a notice at five public places within the vicinity of the Anadarko Agency of the Bureau of Indian Affairs in Oklahoma, for 20 days or more prior to such hearing. Notices of the supplemental hearings were mailed to all known interested parties, or their attorneys of record, at least twenty days prior to scheduled hearings.

These hearings were concluded at Anadarko, Oklahoma, on December 9, 1965, for the purpose of ascertaining the heirs at law of this decedent and the facts and circumstances surrounding the execution of an instrument in writing, dated March 14, 1963, purporting to be his last will and testament.

The evidence adduced at these hearings disclosed that the decedent died on October 11, 1963, at the age of approximately 55 years, a resident of the State of Oklahoma. Beyond this, there are relatively few undisputed questions of fact or law. Dorita High, Kiowa-Comanche Unallottee, claims to be a surviving daughter, and, therefore, his sole heir at law. This is denied by the fifteen nieces and nephews who appear to be his heirs at law - if Dorita High is not his daughter. The majority of these nieces and nephews, and Dorita High, contend that the decedent was mentally incompetent to execute a valid last will and testament on March 14, 1963, and that the purported testamentary instrument executed on that date is not entitled to Departmental approval.

The evidence does establish that the decedent was never married, and that he had no surviving parent, brother or sister. Under the provisions of the Act of February 28, 1891, 26 Stat. 795, Dorita High would be an heir at law, if she is a daughter of this decedent, irrespective of any recognized marriage between her parents. On August 31, 1949, the decedent signed a sworn statement acknowledging that Dorita High was his daughter. On November 27, 1956, the decedent made a will stating that he had no children. The testimony of the numerous witnesses in this matter is equally inconsistent as to what the decedent did or said regarding this paternity question. Bearing in mind the apparent interest of some of the witnesses who testified on this question, their credibility, based on the personal observation of the undersigned, and the issues involved

when the above-mentioned written instruments were made, it is hereby found that Dorita High is, in fact, a daughter of this decedent. Therefore, under the laws of the State of Oklahoma and applicable Federal statutes, she would be the sole heir at law in the estate if the decedent had died intestate.

The decedent's trust or restricted property consists of interests in three Comanche allotments which are hereinafter described, and are situated in Oklahoma under the jurisdiction of the Anadarko Agency of the Bureau of Indian Affairs.

By the terms of the decedent's last will and testament, he makes specific devises to his niece, Viola Atewooftakewa, and to three of her children: Frankie Lee Tooahnippah, Vila Tooahnippah, and Julia Tooahnippah. The same four devisees are also the residuary beneficiaries who would share equally in any property not covered by the specific devises.

The evidence shows that the decedent's last will and testament was prepared by an attorney who, at that time, was employed by the Department. The scrivener and attesting witnesses, at the time this instrument was made, executed an affidavit showing that the will was properly made and executed when the decedent was of sound and disposing mind and memory and not acting under undue influence, fraud, duress or coercion. They could not recall this particular instrument or the decedent when they testified in this matter, but nothing was presented which would cast any doubt on their honesty, belief, or views as expressed in the affidavit.

The contestants of this will urge that from some date in the early 1940's, the decedent drank whisky, wine or other alcoholic beverages to an excess. Further, that this drinking pattern was progressive and that as the result of this excess use of alcohol, coupled with ill health, his mind

was so deteriorated that he was mentally incompetent to make a valid testamentary disposition of his property on March 14, 1963. While the evidence as to the nature and extent of the decedent's drinking pattern is extremely conflicting, the applicable rule of law is not. This Department has held in the Estate of Harris Eugene Russell, 70 I.D. 151, decided May 2, 1963, that the burden of proving mental capacity due to ill health and prolonged use of intoxicants is upon the contestant, and the testimony of law witnesses, who were not present when the will was made, is insufficient to meet this burden. This Russell case, wherein the initial ruling accepted a position similar to that asserted by the contestants, is distinguishable from the present case only in that the facts of chronic alcoholism coupled with diabetes were established to the satisfaction of the Superintendent of the Osage Indian Agency who made the findings of fact. In this case, the undersigned does not believe the evidence supports the factual conclusions which existed in the Russell case.

Several of the contestants and interested witnesses appearing on their behalf, testified that the decedent was always drunk during the last several years of his life. Other witnesses, whose interest in the matter was not established, also testified that they never saw the decedent sober during this same period. Without commenting on the credibility and knowledge of each individual witness, the following general observations seem applicable to all of this testimony. No one disputes the fact that this decedent drank to an excess - often and over an extended period of time.

The undersigned has no difficulty in accepting the fact that the decedent's excessive drinking may have grown progressively worse

during the last few years since this appears to be consistent with the pattern followed by all who use alcohol to an excess. On the other hand, it is impossible to accept at face value, testimony to the effect that he was "never sober" for a period of several years. Likewise, the undersigned would reject the idea that employees of the Field Solicitor's Office, past, present or future, would knowingly participate in the preparation and execution of a will for an intoxicated person. Further, it should be noted that drunken behavior stands out in every way from "normal, non-intoxicated behavior". It follows, therefore, that recollection of individual witnesses would naturally favor those experiences wherein alcohol was involved. If these general observations tend to favor validity of this will, one final general observation which might support an opposing view should be made. The contestants testified that when the decedent "needed" or really wanted something to drink, he would promise, threaten, beg, or do whatever was necessary in an attempt to get alcohol. This same testimony indicates that his relationship to friends and relatives was very often controlled by his drinking pattern at that time. This testimony is accepted as true for the same reason that other general conclusions in the paragraph are accepted. Such testimony is consistent with the common pattern and experience of those who use alcohol to an excess.

The testimony of all the witnesses who testified regarding the decedent's mental condition and drinking habits has been carefully considered and reviewed - regardless of the apparent interest or lack of interest - - of any witness. However, there is clear and convincing evidence by truly disinterested witnesses who were living in the same vicinity as the decedent at the time this will was made, which supports the conclusion that Mr. Chahsenah was mentally competent to make a will in

March, 1963, if he was sober. The testimony of other witnesses to the contrary is not sufficient to be convincing to the undersigned, particularly, when coupled with the terms of the instrument itself and general practice of the Field Solicitor's Office at Anadarko, which is followed with regards to testamentary instruments.

This will is not unnatural in that it fails to provide for the decedent's daughter, Dorita High. There is no evidence that he had any close paternal ties to this girl during the later part of his life. After the death of his mother in 1954, his closest relatives, besides his daughter, were nieces and nephews, and the testimony speaks for itself in establishing that relationships with these nieces and nephews was often "strained". On November 27, 1956, he executed a will naming his niece, Viola Atewooftakewa as the sole beneficiary, and stated that Viola had been raised in his mother's home. Subsequently, he made four more wills including the March 14, 1963 instrument. In addition to the testimony, all five of these instruments have been reviewed in the light of the other evidence. It is hereby found that this last will is natural and logical in the light of all the evidence.

It is hereby found that this will was made in accordance with the facts and circumstances expressed in the testimony of the attesting witnesses, and no clear and convincing evidence has been presented which would justify denying Departmental approval.

NOW, THEREFORE, by virtue of the power and authority vested in the Secretary of the Interior by Section 1 of the Act of June 25, 1910 (36 Stat.

855), and other applicable statutes, and pursuant to 25 CFR 15, I hereby approve the decedent's last will and testament, dated March 14, 1963.

IT IS ORDERED, that the Superintendent will cause to be made a distribution of the trust or restricted estate of the decedent in accordance with his last will and testament, subject to payment of the probate fee and allowed claims, as follows:

To Viola Atewooftakewa, niece, and Frankie Lee Tooahnippah, grand-nephew, Comanche Unallottees and devisees, an undivided one-half interest in the following:

An undivided 1/4 interest in the allotment of Wah-ah-rock-ah, Comanche #2326, described as the SW/4 of Section 3-2N-8W, I.M., in Okla., containing 160 acres.

To Vila Tooahnippah and Julia Tooahnippah, grand-nieces, Comanche Unallottees and devisees, an undivided one-half interest in the following:

All that part of the allotment of Sarah Chahsenah, Comanche #2778, described as the SW/4 SW/4 of Sec. 4-4N-10W, I.M., in Oklahoma, containing 40 acres.

An undivided 1/5 interest in the allotment of Sarah Chahsenah, Comanche #2778, described as the SE/4 SW/4 of Sec. 4-4N-10W, I.M., in Oklahoma, containing 40 acres.

To Viola Atewooftakewa, niece, Frankie Lee  
Tooahnippah, grand-nephew, Vila Tooahnippah and  
Julia Tooahnippah, grand-nieces, Comanche  
Unallottees and devisees, an undivided 1/4  
interest in the following:

Any and all other trust property, real,  
personal or mixed, not otherwise  
disposed of under the terms of the will,  
if any there be.

The following claims are hereby allowed and  
are to be paid in the order listed below from funds  
now held or hereafter accruing to the credit of  
the estate, subject to payment of the probate  
fee:

1. Crews Funeral Home, Apache, Oklahoma, in  
the amount of \$843.00, covering decedent's  
funeral expenses.

(The following claims have equal priority  
of payment).

2. James W. Aust Finance & Loan Co., 510  
D. Ave., Lawton, Oklahoma, in the amount of  
\$332.79, covering loans made to the decedent  
from November 1960 through February 1961.

C. H. Christian, Route 3, Apache,  
Oklahoma, in the amount of \$56.85, covering  
money loaned to the decedent.

Schartzer's Food Market, Apache,  
Oklahoma, in the amount of \$124.60, covering  
groceries purchased by the decedent.

Elliott Department Store, P.O. Box 352, Apache, Oklahoma, in the amount of \$10.15, covering purchases made by the decedent.

D. V. Warner, Apache, Oklahoma, in the amount of \$1,000.00, covering money loaned to the decedent on July 1, 1961, for the purpose of providing legal services to Strudwick Tahsequah represented by a promissory note signed by this decedent. The balance of the claim of D. V. Warner in the amount of \$2,353.77, also represented by a promissory note, dated July 1, 1961, is hereby disallowed. This latter instrument purportedly relates to some vague gift transaction between the claimant and the decedent which was never completed during the decedent's life. The undersigned is not prepared to obligate the payment of trust or restricted funds to complete this transaction where any contractual rights are extremely dubious due to lack of adequate consideration.

The trust or restricted estate of the decedent having been appraised at \$34,867.00, a probate fee of \$75.00 will be collected by the Superintendent or other officer in charge pursuant to authority found in the Act of January 24, 1923 (42 Stat. 1185).

Done at the City of Tulsa, Oklahoma, and dated August 31, 1966.

(Sgd.) Kent R. Blaine  

---

Kent R. Blaine  
Examiner of Inheritance

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Office of the Solicitor  
Office of the Examiner of Inheritance  
712 Petroleum Building  
Tulsa, Oklahoma 74103

PROBATE  
H-173-66  
H-220-66  
KRB

IN THE MATTER OF THE  
ESTATE OF:  
George Chahsenah,  
deceased Comanche  
Unallottee

)  
)  
)  
)  
)  
PETITION FOR  
REHEARING DENIED

The above-named decedent's last will and testament was approved by the undersigned on August 31, 1966, Probate #H-173-66. On October 31, 1966, Dorita High Horse, Zelma Tselee, John H. Chahsenah, Garnett Tahsequaw, Betsy Lois Chahsenah (Tarsip), Earl Chahsenah, Strudwick Tahsequaw, Lydia Mae Tarsip, James Chahsenah and Albert Tahsequaw, Jr., filed a petition for rehearing under the provisions of 25 CFR 15.17.

The petitioners assert that the last will and testament dated March 14, 1963, was not a proper testamentary instrument, and the order approving it was in error as a matter of fact and as a matter of law. No specific errors of law are set forth; the petitioners' position, simply stated, is that the evidence does not support the factual conclusions reached by the undersigned regarding the testator's mental capacity at the time the will was made and executed.

The extensive evidence presented in this case was carefully considered prior to the initial ruling. It has again been reviewed in the light of the arguments set forth in the petition for rehearing. These arguments presented by the petitioners are not convincing, and the conclusions of law and facts set forth in the order dated August 31, 1966, remain unchanged.

NOW, THEREFORE, by virtue of the power and authority vested in the Secretary of the Interior by Section 1 of the Act of June 25, 1910 (36 Stat. 855), and other applicable statutes, and pursuant to 25 CFR 15, for the foregoing reason, the above-mentioned petition for rehearing is hereby denied.

This action on the petition for rehearing becomes final sixty (60) days from the date hereof. The petitioners may within this 60 day period (or within such additional period as the Secretary, for good cause may allow) file with the Superintendent, Anadarko Agency, Bureau of Indian Affairs, Anadarko, Oklahoma, a written notice of appeal to the Secretary of the Interior. Such notice of appeal shall state specifically and concisely the reasons for the appeal. Copies of the notice of appeal shall be furnished by the appellants to the Examiner of Inheritance and to all parties who share in the estate under the decision of the Examiner, and the notice of appeal shall contain a certification stating that this has been done. In addition, the appellants and any other interested party may, within 60 days from the date on which the notice of appeal is filed, submit written arguments to the Tulsa Regional Solicitor, U. S.

Department of the Interior, 712 Petroleum  
Building, Tulsa, Oklahoma.

Done at the City of Tulsa, Oklahoma, and  
dated November 16, 1966.

(Sgd.) Kent R. Blaine  
Kent R. Blaine  
Examiner of Inheritance

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Office of the Solicitor  
TULSA REGION  
P.O. Box 3156  
Tulsa, Oklahoma 74101

IA-T-4

June 20, 1966

Estate of George	:	Probate H-173-66 and
Chahsenah, deceased	:	H-220-66
Comanche unallottee	:	Order approving will reversed

APPEAL FROM A DECISION OF A HEARING EXAMINER

Dorita High Horse and certain nieces and nephews of the decedent, George Chahsenah, appeal through counsel from an order of the Hearing Examiner, Tulsa, dated August 31, 1966, approving a will of the decedent, and from an order dated November 16, 1966, denying their petition for a rehearing.

The decedent died on October 11, 1963, at the age of 55 years, a resident of the State of Oklahoma, having never married and leaving no surviving parent, brother, or sister. He was survived by several nieces and nephews, most of whom are appellants herein, and by his daughter, Dorita High Horse, appellant herein, the paternity of whom the decedent had acknowledged on several occasions. The evidence supporting the Examiner's finding of fact that Dorita High Horse is decedent's daughter is virtually uncontradicted in the record

and is so convincing that this finding would be sustained on appeal if it had been contested, which it was not.

The record discloses that the decedent executed at least six wills dated successively November 27, 1956, in favor of a niece, Viola Atewooftakewa; March 19, 1957, in favor of a friend, Sammy Schwartz; May 21, 1959, in favor of a friend, Fred H. Benge; October 20, 1959, in favor of a nephew Strudwick Tahsequah; March 6, 1962, in favor of a cousin, Rosa May Wahahrockah; and March 14, 1963, in favor of a niece, Viola Atewooftakewa, and her three children, Frankie Lee Tooahnippah, Vila Tooahnippah and Julia Tooahnippah. None of these wills contains a reference to the daughter of the decedent, although the earliest purported will states that decedent had no children.

The record supports the Examiner's conclusion that, although the decedent's excessive drinking may have grown progressively worse during the last few years of his life, testimony to the effect that the decedent was "never sober" for a period of several years must be rejected as impossible to accept at face value. The record further supports the Examiner's conclusion that the decedent was not in an intoxicated condition at the time he executed the latest purported will dated March 14, 1963. It also supports strongly his further conclusion that when the decedent "'needed' or really wanted something to drink, he would promise, threaten, beg, or do whatever was necessary in an attempt to get alcohol."

The record contains no indication that the decedent ever made any personal effort to work or

earn any wages during his lifetime, but reflects that his principal income was the money he received, usually at monthly intervals, from the leasing of his restricted lands for oil, gas and agricultural purposes. These funds were usually spent within a few hours or days after he received them for intoxicants and for personal items, such as food-stuffs, which could, and often would, be subsequently traded for intoxicants during periods of temporary financial adversity. In order to purchase intoxicants during such periods, he often obtained advances of money from relatives or other associates, several of whom were named as devisees in his various purported wills, and repaid such loans when funds were subsequently received.

The Examiner concluded that the will dated March 14, 1963, met the technical requirements for a valid will and was not unnatural in failing to provide for the decedent's daughter as there was no evidence that the decedent had any close paternal ties to the daughter during the later part of his life. He thereupon approved the latest purported will of the decedent by an order dated August 31, 1966, apparently without considering whether the circumstances were such as to justify such approval as an exercise of the discretionary authority conferred upon the Secretary by 25 U.S.C. §373. The Secretary's responsibility is not adequately discharged when he, or an examiner acting for him, determines that a purported will meets the technical requirements for a valid dispositive instrument and thereupon, without further consideration, approves the will as a matter of course. When a purported will is submitted for approval and it has been determined that it meets the technical requirements for a valid will, further consideration must be given before

approving or disapproving it to determine whether approval will most nearly achieve just and equitable treatment of the beneficiaries thereunder and the decedent's heirs-at-law. 1/

Since the record contains sufficient evidence of the relationship between the decedent and his heir-at-law and his devisees to ascertain whether approval of the will by the Hearing Examiner was an appropriate discharge of the Secretary's responsibility, consideration of the circumstances surrounding these persons will be given at this appellate level.

The decedent was the natural father of Dorita High Horse. The record reflects that during his lifetime the decedent's only contribution toward the welfare of his daughter was to participate in her conception, to acknowledge her status as his daughter, and to visit briefly with her on rare occasions when they would by accident meet on public streets. Before the daughter's birth, he abandoned the mother, with whom he had been living. Although marriage to the mother was not impeded by any existing or subsequent marriage to another woman, the decedent neglected to remain and maintain a home with the mother in order that the daughter would have the advantages of a normal home life during her childhood. Notwithstanding

---

1/ Estate of Oliver Maynahonah, IA-T-1 (June 30, 1966), affirmed as Kadayso v. Udall, Civil Action 66-281, U.S. District Court, Western District of Oklahoma (February 14, 1967); Estate of Kosope (Richard) Maynahonah, IA-141 (October 28, 1954); and Estate of Frank (Oren F.) Simpkins, Osage Allottee No. 1879 (will disapproved December 1, 1943, application for reconsideration denied February 23, 1945).

the fact that the decedent received income from his restricted lands, he made no contribution toward the support or education of his daughter, leaving her to be supported by her mother, until she died when the daughter was six years old, and thereafter by a maternal aunt. The decedent's legal responsibility for the support of his daughter during her childhood could have been enforced by judicial action on her behalf to the extent, if any, that he had unrestricted income or assets, and the Secretary or his authorized representative probably would have honored reasonable requests on the daughter's behalf for contributions toward her support from the decedent's income from restricted lands. However, no action toward that end was taken by the decedent, by his daughter, or by others on her behalf.

If the decedent had died several years earlier leaving an orphaned minor daughter being raised by an aunt, any will disinheriting the daughter would be subject to disapproval because the estate would be needed for discharging his responsibility for supporting the child. The fact that the daughter had attained majority and married prior to the death of the decedent does not alter the fact that the decedent had an obligation to his daughter which was not discharged either during his lifetime or under the terms of his purported will. For this reason it is inappropriate that the Secretary perpetuate this utter disregard for the daughter's welfare by lending his approval to the decedent's will.

This decedent failed to make any appreciable effort toward discharging his responsibilities to his daughter during her childhood, and upon her attaining adulthood he attempted by will to devise

and bequeath to others such of his restricted assets as had not been dissipated. This he could do only if he possessed unrestricted power of testamentary disposition. His attempt to do so, however, was limited by the fact that the Secretary must exercise the discretionary responsibility of approving the will before it can become effective. Although the Examiner approved the will, this appeal from that approval requires the appellate authority to determine whether such approval was a reasonable exercise of the discretionary responsibility of the Secretary.

I hereby determine, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (210 DM 2.2a(3) (a), 24 F.R. 1348) and redelegated to the Regional Solicitor (Solicitor's Regulation 23, 31 F.R. 4631), that under the circumstances hereinbefore set forth the Secretary's approval of the purported will dated March 14, 1963, should not be given, the Examiner's approval is rescinded, and the will is hereby disapproved.

Each of the decedent's previous wills would receive similar disposition if offered for approval because each of them disinherits the decedent's daughter. It follows that no useful purpose would be served by additional hearings, for which reason the Examiner's denial of a petition for rehearing is not reversed. Accordingly, the entire estate of the decedent remaining after payment of allowed claims shall be distributed, without further order of the Examiner, to Dorita High Horse as the sole heir of the decedent.

(Sgd.) Raymond F. Sanford  
Raymond F. Sanford  
Regional Solicitor

# Supreme Court of the United States

No. 300 --- , October Term, 19 69

**James Toohimpah Tate, et al.,**

**Petitioners,**

**v.**

**Walter J. Michel, Secretary of the  
Interior for the United States, et al.**

ORDER ALLOWING CERTIORARI. Filed **October 13** ----- , 19 **69**.

The petition herein for a writ of certiorari to the United States Court of Appeals for the **Tenth** ----- Circuit is granted., **and the case is placed on the summary calendar.**

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.